

**Pacific Bell, a wholly-owned subsidiary of Pacific Telesis, a wholly-owned subsidiary of Southwestern Bell Communications and Telecommunications International Union, California Local 103 IFPTE, AFL-CIO.** Case 32-CA-16810

November 30, 1999

**DECISION AND ORDER**

BY CHAIRMAN TRUESDALE AND MEMBERS FOX  
AND HURTGEN

On June 11, 1999, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Respondent filed exceptions, a supporting brief, and a motion to reopen the record. The General Counsel filed a brief in opposition to the Respondent's motion to reopen the record. The Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record<sup>1</sup> in light of the exceptions and briefs<sup>2</sup> and has decided to affirm the judge's rulings, findings,<sup>3</sup> and conclusions and to adopt the recommended Order.<sup>4</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Pacific Bell, a wholly-owned subsidiary of Pacific Telesis, a wholly-owned subsidiary of Southwestern Bell Communications, San Jose, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER HURTGEN, dissenting in part.

Contrary to the judge, I do not find that either mailing the notice or transmitting it to employees by electronic means is warranted in the circumstances of this case.

<sup>1</sup> We deny the Respondent's motion to reopen the record. The motion involves evidence of events occurring after the close of the hearing. Furthermore, we find that the evidence would not require a different result in this case. See *Modern Drop Forge Co.*, 326 NLRB 1335 at 1 fn. 1 (1998); *WXRK*, 300 NLRB 633 fn. 1 (1990); *Contemporary Guidance Services*, 291 NLRB 50 fn. 2 (1988).

<sup>2</sup> The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

<sup>3</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>4</sup> Although the Respondent has excepted to the judge's conclusion that it violated Sec. 8(a)(5), it does not separately except to the judge's recommended remedy for that violation, nor does it otherwise argue that such remedy is inappropriate in the circumstances of this case. The Board has the discretionary authority to modify the remedy here but, absent exceptions, we find no need to do so or to address the broad remedial issue discussed in the dissent.

As an initial matter, I note that the Board has broad discretionary authority to fashion remedies that will best effectuate the purposes of the Act. *NLRB v. J. H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 260-263 (1969). Further, it is "firmly established that remedial matters are traditionally within the Board's province and may be addressed by the Board in the absence of exceptions." *Indian Hills Care Center*, 321 NLRB 144 fn. 3 (1996), and cited cases.<sup>1</sup>

As an initial matter, I note that notice posting is the Board's traditional means of notifying employees of their rights and of a respondent's unfair labor practices. See, e.g., *Page Aircraft Maintenance*, 123 NLRB 159 (1959). The Board does not additionally require that notices be mailed to employees unless a traditional posting is insufficient to apprise employees of their rights and of the unlawful conduct. *Peoples Gas System, Inc.*, 253 NLRB 1180, 1181 (1981).

Here, there is no evidence or claim that notice posting is inadequate. Although unit employees work at several facilities, there are bulletin boards at each, and these bulletin boards are traditionally used by the Respondent and incumbent Union to communicate with employees. Further, the General Counsel concedes the sufficiency of the Board's traditional remedy by expressly seeking it and opposing the Charging Party's request that the Respondent be required to mail the notices.

Significantly, the Charging Party does not argue that the traditional notice posting remedy is inadequate. Rather, it contends that, because of the asserted egregiousness of the violations, additional remedies are required, e.g., as mailing the notices. I find no support for requiring notice mailing on this basis. Nor did the judge. Rather, the judge's recommendation that the Respondent be required to mail or electronically communicate the notice to unit employees was based on generalized references to "changing times" and the "electronic age" in which we live. However, I find that such generalized notions, standing alone, are insufficient to support a change in well-established Board remedial principles. In any event, before the Board embarks on such an endeavor, the Board should first receive full briefing by the private parties, the General Counsel, and perhaps amici as well.<sup>2</sup> Accordingly, I would not grant this additional

<sup>1</sup> I therefore disagree with my colleagues' conclusion that the propriety of the judge's remedial provisions need not be considered here because the Respondent (although excepting to having violated the Act) did not specifically except to the resultant remedy imposed. It is well settled that the Board's authority and obligation to fashion appropriate remedies exists irrespective of whether exceptions have been filed. Further, I find that this case is one that clearly calls for the Board's exercise of its remedial authority. And, contrary to my colleagues' intimation, it is the judge's recommended remedy which raises the "broad remedial issue" that they decline to address.

<sup>2</sup> No party argued before the judge or the Board that regular or electronic mailing is appropriate in a case where, as here, the violation is not egregious and regular notice posting is adequate.

remedy, and require only that the notice be posted at all facilities where unit employees work.<sup>3</sup>

*Judith J. Chang and Valerie Hardy-Mahoney, Esqs.*, for the General Counsel.

*William Gaus, Esq. (Pillsbury, Madison & Sutro)*, of San Francisco, California, for the Respondent.

*James Eggleston, Esq. and Noreen Farrell, Esq.*, with him on brief, of Oakland, California, for the Charging Party.

### DECISION

#### STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard this case in trial on January 29, 1999, in Oakland, California, pursuant to a complaint and notice of hearing issued by the Regional Director for Region 32 of the National Labor Relations Board on September 30, 1998. The complaint is based on a charge filed on June 9, 1998, by the Telecommunications International Union, California Local 103 IFPTE, AFL-CIO (the Charging Party or the Union) against Pacific Bell, a wholly-owned subsidiary of Pacific Telesis, a wholly-owned subsidiary of Southwestern Bell Communications (the Respondent).

The complaint, as amended at the hearing, alleges that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing and refusing to provide the Union with requested information relevant to the Union's bargaining for a successor collective-bargaining agreement with the Respondent during the period May 14 through late August 1998 and by failing and refusing to recognize the Union and/or bargain with it for a new collective-bargaining agreement from June 3 until on or about August 12, 1998. The Respondent does not so much contest the factual allegations but rather interposes that its refusals occurred in a situation and at a time when there was confusion and ambiguity over the identity of the Union which represented its employees and therefore argues its actions were justified under the circumstances and not violative of the Act.

Upon the entire record<sup>1</sup> here, including helpful briefs from the parties I make the following<sup>2</sup>

<sup>3</sup> Because I would not require that the notices be mailed to unit employees, I would likewise not require Respondent to provide the Board with proof that such transmission has occurred, as specified in Sec. 2(a) of the Order.

<sup>1</sup> On May 6, 1999, the Respondent moved for and, on May 18, 1999, the General Counsel opposed the introduction into evidence of two exhibits: (1) the record of the U.S. District Court for the Northern District of California granting the Communications Workers of America, AFL-CIO's motion to Compel Arbitration and, (2) the opposition of the Charging Party to that District Court motion. The Respondent offers the exhibits, which came into existence after the close of the hearing, to show "that there was, and is, a bona fide dispute over the rights of the parties to represent the bargaining unit." The General Counsel opposes the receipt into evidence of the proffered exhibits because they are neither "newly discovered" nor "previously unavailable."

In the General Counsel's cited case, *Machinists Lodge 91 (United Technologies)*, 298 NLRB 325 (1990), the Board asserts at 325 fn. 1:

We agree with the General Counsel that the proffered evidence is neither "newly discovered" nor "previously unavailable evidence" because it did not exist at the time of the hearing. *Seder Foods Corp.*, 286 NLRB 215 (1987). Rather, the proffered evidence involves events allegedly occurring subsequent to the

### FINDINGS OF FACT

#### I. JURISDICTION

At all times material the Respondent, a corporation, with an office and place of business in San Jose, California, is engaged in providing telephone services throughout California and the western United States. The Respondent, in the course and conduct of its business operations, derives annually gross revenues in excess of \$100,000 and, purchases and receives within the State of California goods and services valued in excess of \$50,000 which originated outside the State. Based on these facts there is no dispute and I find that the Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. Background

The Respondent for many years has provided phone services in the State of California. As part of its provision of services, the Respondent has maintained a number of northern California offices. Since at least 1980 the Respondent has recognized the Union as the exclusive representative of employees in the following unit (the unit):

All full time and regular part-time employees employed in the following job classifications: Cashier, Collection Representative, Customer Associate, Office Associate, Reports Associate, Service Representative, Staff Associate excluding all other employees, guards and supervisors as defined in the Act.

The uncontradicted testimony of the Charging Party's president, Alicia Ribeiro, was that the unit is comprised primarily of service representatives. She also testified that the Communications Workers of America, a separate labor organization which represents certain of the Respondent's employees, also represents a bargaining unit which contains service representatives and others job classifications in the unit. Indeed some of those employees are employed at the same facilities where unit employees are employed.

The Union has had a series of collective-bargaining agreements with the Respondent covering the unit employees. These contracts have been similar to and in many respects identical in content and duration with contracts between the Respondent

close of the hearing and the issuance of the judge's decision and order. The Respondent has failed to demonstrate that the circumstances arising after the close of the hearing would alter the result in this case. See National Labor Relations Board Rules and Regulations, Section 102.48(d)(1); *Presbyterian Hospital*, 285 NLRB 935 fn. 1 (1987). Accordingly, we deny the Respondent's motion.

On similar grounds, I deny the instant motion. *Opportunity Homes, Inc.*, 315 NLRB 1210 fn. 5 (1994).

<sup>2</sup> As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings here are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

and the Communications Workers of America covering service representatives and other job titles within the unit.

### *B. Events*

#### *1. The merger agreement*

On May 30, 1997, the Charging Party and the Communications Workers of America (CWA) entered into a memorandum of understanding (the MOU) which contemplated a merger. The agreement contains various provisions and procedures including:

2. The members of [the Charging Party] shall give the right to ratify the TIU/CWA merger provided in this MOU by two (2) secret ballot votes as follows: (a) the first ratification vote will occur promptly upon execution of this agreement; and (b) the second ratification vote will occur on or about July 31, 1998 or as soon as practicable after a CWA determination that acceding to a Pacific Bell request for early bargaining is in the best interests of Union members. The CWA temporary charter and transitional procedures provided in the MOU shall immediately effective upon TIU membership approval of this MOU in the first ratification vote and presentation by TIU to CWA of the waiver of jurisdiction described in paragraph 1 of this MOU. The remaining provisions of the MOU regarding completion of the merger and dissolution of TIU shall be subject to final approval of the TIU membership in the second ratification vote.

3. Upon TIU membership approval in the first ratification vote, CWA will issue a temporary charter to TIU authorizing TIU to operate as an affiliate of CWA in accordance with the terms of this MOU. The terms of the temporary charter will extend through the August 31, 1998 expiration date of the current TIU collective bargaining agreement with Pacific Bell or through the date of the second ratification votes of TIU members in the event such membership vote rejects the final terms of CWA/TIU merger, whichever occurs earlier.

4. During the term of the CWA temporary charter, TIU/CWA will remain the exclusive representative of the former TIU unit employees, working under the TIU/CWA Pacific Bell collective bargaining agreement, with TIU/CWA existing and operating as an affiliated provisional, autonomous Local Union of CWA in accordance with the following provisions:

....  
(C) TIU shall be solely responsible for representing TIU bargaining unit employees as collective bargaining representative for TIU bargaining unit employees in collective bargaining matters. CWA is not authorized to serve as collective bargaining representative for TIU bargaining unit employees during the term of the temporary charter and will not enter any agreement or take any action under color of such authority without the express written agreement of TIU.

(D) TIU shall be solely responsible for performance and satisfaction of the duty of fair representation to TIU bargaining unit employees during the term of the temporary charter and shall assume all liability arising from any claim of breach of this duty.  
....

6. In the event the TIU membership rejects completion of the TIU/CWA merger in the second ratification vote, the merger shall be of no force or effect. TIU shall then remain in and continue its status as the exclusive bargaining representative for the TIU bargaining unit; the IFPTE waiver of jurisdiction shall expire and TIU shall revert to the status as an affiliated Local Union of the International Federation of Professional and Technical Employees, AFL-CIO.

....  
8. Any dispute regarding the application, interpretation or enforcement of the terms of this MOU shall be submitted by the parties to neutral, binding arbitration in accordance with the rules and procedures of the American Arbitration Association. The arbitrator shall have no authority to add to, subtract from, or otherwise alter or vary the terms of this MOU.

In June 1997 a first vote consistent with the terms of the memorandum of understanding took place and the Charging Party's membership voted its approval of the interim process. Charging Party President Alicia Ribeiro testified that in February 1998 difficulties arose between CWA and the Charging Party over positions and decisions concerning bargaining with the Respondent. The Charging Party and the CWA did not resolve these differences and the merger was not consummated with no second vote ever having been conducted.<sup>3</sup>

#### *2. The Respondent's role*

The Respondent's labor relations staff was aware of the agreement between the two Unions soon after its consummation. Susan Crutcher, the Respondent's executive director of labor relations, testified that the Respondent did not alter the way it dealt with the two organizations respecting the current contracts but began, on the Unions' initiative, to meet jointly with the two respecting a new agreement. Crutcher testified that she was aware in December 1997 that the two Unions were attending meetings and became aware that friction between the organizations had arisen. Crutcher testified that in late February she asked Ribeiro if the merger was going to go through and was told by Ribeiro that she would campaign against it.

The Charging Party through Ribeiro, sent a preliminary letter respecting arrangements for 1998 negotiations to Michael Rodriguez, the Respondent's vice president of labor relations, dated May 14, 1998, seeking various categories of information in aid of bargaining. Crutcher responded by letter dated June 3, 1998. The letter asserted:

I have received your request for bargaining dated May 14, 1998. I have also received the Memorandum of Understanding dated May 30, 1997 between TIU and CWA regarding a possible merger of the two unions.

The memorandum calls for two votes to be taken prior to final agreement on a 1998 contract. One vote, if favorable, would establish TIU as a local of CWA, and a second vote, if favorable, would establish CWA as the bargaining representative of the employees in the bargaining unit. Our understanding is that the first vote has been taken and that this vote was decisively in favor of merger.

<sup>3</sup> The two labor organizations did not necessarily view the circumstances in the same way. See further discussion above.

The May 30, 1997 agreement thus clearly contemplates that the issue of representation would be resolved by a second vote of the TIU membership prior to final agreement of a 1998 contract. Of the basis of what we now know, we believe there is clearly a question concerning representation that must be resolved. It would be inappropriate to begin bargaining with TIU while this question concerning representation is pending. We believe this matter must be resolved without delay and if there is no immediate prospect of its being resolved by the two unions, we believe it should be resolved by the National Labor Relations Board.

If there has been a superseding agreement between TIU and CWA, a vote of the TIU membership or any other event that, in your view, makes the May 30, 1997 Memorandum of Understanding inoperative, please furnish that information to me. If we do not receive any such information before the close of business on June 4, 1998, we will assume that the May 30, 1997 Memorandum is still in effect and we will file a petition with the National Labor Relations Board to resolve the question concerning representation.

President Ribeiro responded by letter of June 5, 1998, *inter alia*, renewing the Charging Party's demand that bargaining for a new agreement commence, protesting the Respondent's prior letter as an unfair labor practice and assuring the Respondent the agreement between the two unions was "no longer valid and has no effect." That same day the instant charge was filed. Crutcher testified at about this time she asked an official of the Communications Workers of America if there was to be a second vote under the terms of the MOU and was told that "[s]teps were being taken to secure the second vote."

On June 5, 1998, the Respondent filed a petition, Case 32-RM-753, respecting the unit at issue here. The petition was ultimately found to be without merit. On or about August 7, 1998, the Respondent resumed bargaining with the Charging Party and in late August supplied the requested information.

### C. Analysis and Conclusion

#### 1. The issues narrowed—the arguments of the parties

The issues in this case are quite narrow and it is well to initially set forth what is and is not at issue. Thus, the history of bargaining, the appropriateness of the unit, and the Union's representative status until May 1998 are not disputed. There is essentially no doubt or contest that the Charging Party, on or about May 14, 1998, requested of the Respondent information relevant to collective bargaining for a successor collective-bargaining agreement. There is no doubt that the Respondent failed and refused to provide the Charging Party with the requested information and refused to agree to commence bargaining for a new contract until August 12, 1998. On and after August 12, 1998, the Respondent resumed bargaining and in late August 1998 provided the requested information so that, as of that date, there is again no dispute or contention that the Respondent was violating the Act.

The General Counsel and the Charging Party argue from these essentially unchallenged facts supported by citation of authority on brief that a *prima facie* case of a violation of Section 8(a)(5) and (1) of the Act has been made out both as to the information request and bargaining allegations of the complaint.

The Respondent defends its actions as described above on narrow grounds. Again it is well to look closely at the Respondent's position to understand what is and is not at issue. The Respondent argues that the memorandum of understanding between the Charging Party and the CWA, insofar as it believed the situation existed in June through August 1998, raised in its mind a reasonable doubt as to who, if anyone, represented its employees. This argument, in turn, requires consideration of the terms of the MOU and the state of affairs during the relevant period. The MOU provided a multiple step process: an initial vote, an interim transition stage, a second vote and, finally, depending on the outcome of the second vote, a merger or restoration of the status quo ante before the agreement was entered into.

The Respondent is not heard to argue that the Charging Party either lost its status as labor organization or its status as the exclusive representative of unit employees when it entered into the MOU. Nor does the Respondent contend that the Charging Party during the initial interim stage after the first vote, lost its status as labor organization or its status as the exclusive representative of unit employees. Narrowly, the Respondent contends that, when the "second" vote called for under the MOU should have been held or at least scheduled,<sup>4</sup> and when the two labor organizations were in apparent disagreement and giving the Respondent conflicting information respecting whether or not a second election would be held at all, the Respondent had a reasonable and good-faith doubt respecting what labor organization, if any, represented its unit employees.

The General Counsel challenges the Respondent asserted defense on brief at 11:

The General Counsel advances the following two separate and distinct theories in support of a finding that the Act has been violated: (1) the Respondent failed to provide any cognizable legal justification for its unlawful actions; and (2) the MOU and [the Charging Party's decision not to abide by the terms of the MOU did not substantially alter the organizational structure of [the Charging Party] such that a [question concerning representation] was raised.

The Charging Party emphasizes that the MOU had consequences relevant to the Charging Party's bargaining relationship with the Respondent only upon a second vote in which a majority of the Charging Party member voters approved the merger. Thus, argues the Charging Party, the second vote was a condition precedent rather than a condition subsequent to any relevant change in the Charging Party's circumstances. Thus, when the merger agreement was abandoned, argues the Charging Party, and in all events unless and until a second vote favoring merger was conducted and the results communicated to the Respondent, the Respondent was without any possible basis<sup>5</sup> for challenging the Charging Party's status as representative of unit employees. Finally, the Charging Party argues the Re-

<sup>4</sup> The Respondent argues on Br. at 12:

While the MOU provides that [the Charging Party] remains the representative under a temporary CWA charter until the second vote, the MOU also provides that, if the first vote is favorable, the second vote has to occur before 1998 bargaining. . . .

The temporary charter, by its terms, lasted only until the second vote.

<sup>5</sup> The Charging Party adds that the mere filing of an RM petition does not demonstrate good faith citing *Hydro Conduit Corp.*, 278 NLRB 1124 (1986).

spondent's conduct rises to the level of egregious bad faith infected with unlawful motives and requires that the Charging Party receive its costs and attorneys' fees incurred in the NLRB proceedings.

## 2. Analysis

The General Counsel argues on brief that the Respondent's agents testified that they interpreted the MOU as limiting the bargaining representative authority of the Charging Party only to the life of the 1995–1998 contract. Counsel for the General Counsel then asserts: "The Respondent provided no legal support for this assertion, and it appears that its agents totally misconstrued its legal obligations under the Act." (G.C. Br. at 16.) The Respondent argues on brief that the MOU expressly does not disturb the Charging Party's bargaining rights respecting the 1995 contract unless and until there was a second vote. The Respondent argues further that the MOU clearly contemplates a second vote prior to 1998 bargaining and therefore the Respondent was entitled to question the Charging Party's status for bargaining a new contract when the situation respecting the vote was confused and statements regarding it were conflicting.

I resolve this fundamental difference in interpretation of and approach to the MOU in favor of the General Counsel and the Charging Party. Regardless of what the situation that might be or have been, had a second vote been conducted—a situation I do not reach nor consider—the Respondent was not privileged to withdraw recognition, fail to bargain or refuse to provide relevant information to the Charging Party because a second vote had not been held, had not been scheduled or, because there were conflicting reports respecting the status of the MOU. In essence I find the MOU's second vote was an explicit condition precedent to any change in the Charging Party's status and, the condition precedent not having occurred, the Respondent may not rely on the MOU to support any presecond vote claim of doubt respecting the Charging Party's status as the exclusive representative of unit employees. The Respondent was obligated, at the very least, to bide its time and take appropriate action if, and when, a second vote was taken and the merger approved.

Having found that the Respondent could not rely on the MOU or any pre-second election circumstances to support its actions, I find that the Respondent has not met its burden of establishing a valid reason for (1) failing to timely supply the information requested by the Charging Party and (2) refusing to bargain for a new agreement during the June to August period noted above. I further find that the Respondent in so failing and refusing to bargain with the Charging Party during the period indicated violated Section 8(a)(5) and (1) of the Act as alleged in the complaint.<sup>6</sup>

## REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action necessary to effectuate the purposes and policies of the Act including the posting of a remedial notice consistent with the Board's decision in *Indian Hills Care Center*, 321 NLRB 144 (1996). Given that in August 1998 the requested information was supplied, bargaining resumed, and in due course a new contract was reached, I shall not include the normal direction that the

Respondent provide the requested information or that the Respondent resume bargaining.

The Charging Party argues that the Respondent's conduct was informed by its hostility to the demands and positions of the Charging Party respecting actions and policies of the Respondent and, further, that the violations of the Act engaged in by the Respondent were egregious in nature. From these assertions the Charging Party urges that an award of costs and attorney's fees be included in the directed remedy. I disagree that the violations found, even assuming that they were so driven by hostility to the Charging Party and favoritism to the CWA, support such an award. I therefore decline to include the requested remedy herein.

The Charging Party seeks the mailing of a notice to each unit employee. The General Counsel seeks normal posting. We live in changing times. The Board's traditional notice posting as a means of communication with employees is increasingly less effective in an electronic age in which the physical posting of notices in common areas generally is not the sole or even the most common means of providing information to employees. It is evident from the record that the unit employees involved herein are scattered at numerous locations and that the Respondent communicated with its employees respecting this matter via electronically transmitted memoranda directed to "All employees Covered by the 1995 TIU Contract." I find that the Respondent shall be required, in addition to the normal posting requirements, to send each unit employee a copy of the notice herein by the method generally used to communicate to employees regarding matters of importance. Thus, the Respondent will be required to either mail or transmit a copy of the notice herein to each unit employee by the means of electronic transmission currently used by the Respondent for the dissemination of important information to employees at the time the notice is posted, for example by E-mail if such is the current means of inter-company communications.

## CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Telecommunications International Union, California Local 103 IFPTE, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union represents the Respondent's employees in the following unit (the unit) which is appropriate for bargaining within the meaning of Section 9 of the Act:

All full time and regular part-time employees employed in the following job classifications: Cashier, Collection Representative, Customer Associate, Office Associate, Reports Associate, Service Representative, Staff Associate excluding all other employees, guards and supervisors as defined in the Act.

4. The Respondent violated Section 8(a)(5) and (1) of the Act during the period of May 14 through August 1998 by wrongfully refusing to supply the Union with requested information relevant and necessary to the Union's role as collective-bargaining agent of unit employees.

5. The Respondent violated Section 8(a)(5) and (1) of the Act during the period of June 3 through August 7, 1998, by failing and refusing to meet and bargain with the Union ~~respecting a new collective-bargaining~~ agreement for unit em-

<sup>7</sup> Memoranda were sent by facsimile transmission.

<sup>6</sup> The Charging Party's request for extraordinary remedies will be discussed *infra* in the remedy section of this decision.

specting a new collective-bargaining agreement for unit employees.

6. The unfair labor practices described above are unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>8</sup>

#### ORDER

The Respondent, Pacific Bell, a wholly-owned subsidiary of Pacific Telesis, a wholly owned subsidiary of Southwestern Bell Communications, San Jose, California, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to supply the Union with requested information relevant and necessary to fulfill its function as the unit employees collective-bargaining representative in bargaining for a new collective-bargaining agreement.

(b) Failing and refusing to engage in collective bargaining with the Union for a new collective-bargaining agreement for unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Preserve and, on request, make available to the Board or its agents for examination and copying, records necessary to insure that the terms of this Order have been fully complied with, including hard copy exemplars of any electronic communication sent to employees.

(b) Within 14 days after service by the Region, post at its facilities at which unit employees are regularly employed copies of the attached notice marked "Appendix."<sup>9</sup> Copies of the notice, on forms provided by the Regional Director, in English and such other languages as the Regional Director determines are necessary to fully communicate with employees, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure the notices are not altered, defaced or covered by other material. Further, the Respondent shall mail or disseminate by means of electronic communication—consistent with the provisions of the section of this decision entitled Remedy—a copy or image of the notice to each

<sup>8</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

<sup>9</sup> If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgement of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

and every unit employee. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current unit employees and former unit employees employed by the Respondent at any time during the period May through August 1998.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

Our employees in the following unit are represented by the Telecommunications International Union, California Local 103 IFTPE, AFL-CIO in the following unit of employees (the unit):

All full time and regular part-time employees employed in the following job classifications: Cashier, Collection Representative, Customer Associate, Office Associate, Reports Associate, Service Representative, Staff Associate excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to supply the Union with requested information relevant and necessary to fulfill its function as the unit employees' collective-bargaining representative in bargaining for a new collective-bargaining agreement.

WE WILL NOT fail and refuse to engage in collective bargaining with the Union for a new collective-bargaining agreement for unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

PACIFIC BELL, A WHOLLY-OWNED SUBSIDIARY OF  
PACIFIC TELESIS, A WHOLLY-OWNED SUBSIDIARY OF  
SOUTHWESTERN BELL COMMUNICATIONS